

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
AVIA ENERGY DEVELOPMENT, L.L.C.,	§	CASE NO. 05-39339-bjh-11
	§	
DEBTOR.	§	(Chapter 11)
	§	
	§	(Application is Pending for Joint
	§	Administration with Case No. 05-
	§	39342-hdh-11)

AVIA ENERGY DEVELOPMENT, L.L.C.;	§	
AVIA DE MEXICO S. DE R.L. DE C.V.;	§	
AND JAMES C. MUSSELMAN,	§	
	§	
Plaintiffs,	§	
	§	
and	§	
	§	
THOMAS O. HICKS AND JACK D. FURST,	§	
	§	
Intervenors,	§	
	§	
vs.	§	
	§	ADVERSARY NO. _____
CARLOS FRANCISCO NAVERRO	§	
AND MICHAEL FARMAR,	§	
	§	
Defendant & Third-Party Plaintiff,	§	
	§	
vs.	§	[Removed from the 192 nd Judicial
	§	District Court of Dallas County
JACK LAFIELD AND JOHN HUGHETT,	§	Texas – Cause No. 03-03214-K]
	§	
Third-Party Defendants.	§	

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE
AND TO ALL INTERESTED PARTIES:

Pursuant to 28 U.S.C. §1452 and Bankruptcy Rule 9027, Avia Energy Development, L.L.C., Avia de Mexico S. de R.L. de C.V., and James C. Musselman, the co-plaintiffs in the referenced litigation (collectively, the “Removing Parties”), file this Notice of Removal, and in support respectfully would show the following:

STATEMENT OF BASIS FOR REMOVAL

1. On August 18, 2005 (the “Petition Date”), Avia Energy Development, L.L.C. (hereinafter, “Avia USA”) filed a voluntary bankruptcy petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (Case No. 05-39339-BJH-11).

2. Subsequently, on August 18, 2005, Avia De Mexico S. De R.L. De C.V., an affiliate of Avia USA (hereinafter, “Avia de Mexico”), filed a voluntary bankruptcy petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (Case No. 05-39342-HDH-11). Currently, a motion is pending in each bankruptcy case requesting that the two bankruptcy cases of Avia USA and Avia de Mexico be jointly administered under the case number that has been assigned to Avia USA.

3. By this notice and in accordance with 28 U.S.C. § 1452 and Bankruptcy Rule 9027, the Removing Parties hereby remove the lawsuit pending under Cause No. 03-03314-K and Cause No. 04-10181-L in the 192nd Judicial District Court of Dallas County, Texas (as described with more particularity in paragraphs 5 and 6 below) (the “State Court Proceeding”) to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, for further administration as an adversary proceeding under the bankruptcy case of Avia USA.

4. Removal to the United States Bankruptcy Court for this District is appropriate given the directive in 28 U.S.C. § 1452(a), which provides that, “A party may remove any claim ...in a civil action...to the district court for the district where such civil action is pending if such district court has jurisdiction of such claim...under section 1334 of this title.” Removal to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is appropriate under 28 U.S.C. § 1452, because, in accordance with Bankruptcy Rule 9027, the State Court Proceeding being removed is located in Dallas County, Texas, which is part of the territory constituting the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas, and because, pursuant to 28 U.S.C. § 157, the bankruptcy court is a unit of the federal district court that has been referred all proceedings arising in or related to a case under the Bankruptcy Code. *See* Miscellaneous Order No. 33 of the United States District Court for the Northern District of Texas, Dallas Division. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 because resolution of the claims raised by the State Court Proceeding constitute “core” matters of the Debtor’s bankruptcy case as the term “core” is defined by 28 U.S.C. § 157(b)(2) (as more particularly explained below), or alternatively, such matters involve civil proceedings of non-core matters that arise under title 11 or arise in or are related to cases under title 11. To the extent that any non-core matters are involved, the Removing Parties each consent to entry of final orders or judgment by the bankruptcy judge as provided by Bankruptcy Rule 9027(a)(1).

5. Prior to the Petition Date, the Removing Parties were co-plaintiffs in a suit presenting claims in the following case which is pending in the 192nd Judicial District Court of Dallas County, Texas (hereinafter, referred to as the “Removed Case” or the “State Court

Proceeding”):

CAUSE NO. 03-03314-K

AVIA ENERGY DEVELOPMENT, L.L.C.;	§	IN THE DISTRICT COURT
AVIA DE MEXICO S. DE R.L. DE C.V.;	§	
AND JAMES C. MUSSELMAN,	§	
	§	
Plaintiffs,	§	
	§	
and	§	
	§	
THOMAS O. HICKS AND JACK D. FURST,	§	192 ND JUDICIAL DISTRICT
	§	
Intervenors,	§	
	§	
vs.	§	
	§	
CARLOS FRANCISCO NAVERRO	§	
AND MICHAEL FARMAR,	§	
	§	
Defendant & Third-Party Plaintiff,	§	
	§	
vs.	§	
	§	
JACK LAFIELD AND JOHN HUGHETT,	§	
	§	
Third-Party Defendants.	§	DALLAS COUNTY, TEXAS

6. Also prior to the Petition Date, the Removing Parties were parties in a suit presenting claims in the following case which was consolidated with the Removed Case in the 192nd Judicial District Court of Dallas County, Texas (hereinafter, referred to as the “Removed Case” or the “State Court Proceeding”):

CAUSE NO. 04-10181-L

CARLOS FRANCISCO NAVARRO and	§	IN THE DISTRICT COURT
MICHAEL FARMAR,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
JAMES C. MUSSELMAN,	§	
	§	193 rd JUDICIAL DISTRICT
Defendant,	§	
	§	
and	§	
	§	
AVIA ENERGY DEVELOPMENT, LLC;	§	
AVIA DE MEXICO S. DE R.L. DE C.V.;	§	
THOMAS O. HICKS; JACK D. FURST;	§	
JACK LAFIELD and JOHN HUGHETT,	§	
	§	
As Necessary Parties.	§	DALLAS COUNTY, TEXAS

7. The claims asserted in the State Court Proceeding include, without limitation, claims for breach of fiduciary duties, fraud, conversion, negligence, interference with contract, constructive trust, civil conspiracy, theft, monies had and received, declaratory relief, and breach of the Rule 11 Agreement. The claims constitute core proceedings, without limitation, pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (E), (H), (M), and (O).

7. The current status of the State Court Proceeding is that it is pending, but subject to the automatic stay in the bankruptcy cases as provided in 11 U.S.C. § 362(a).

WHEREFORE, the Removing Parties hereby provide notice to this Court and the parties of record in the State Court Proceeding of the removal of the State Court Proceeding to this Court for full and final determination.

Dated: September 22, 2005

Respectfully submitted,

/s/ Kimberly A. Elkjer

Kimberly A. Elkjer
Texas State Bar No. 06527040
Email: kim.elkjer@solidcounsel.com
Robert M. Millimet
Texas State Bar No. 24025538
Email: rob.millimet@solidcounsel.com
SCHEEF & STONE, L.L.P.
5956 Sherry Ln., Suite 1400
Dallas, Texas 75225
(214) 706-4200
(214) 706-4242 (Fax)

and

/s/ Marvin R. Mohny

Marvin R. Mohny
Texas Bar No. 14252500
120 Founders Square
900 Jackson Street
Dallas, Texas 75202
Telephone: 214-698-3011
Facsimile: 214-698-9207
Email: mavinmohny@aol.com

ATTORNEYS FOR AVIA ENERGY
DEVELOPMENT, L.L.C., AND
AVIA DE MEXICO S. DE R.L. DE C.V.

and

/s/ Curtis L. Marsh

Curtis L. Marsh
Texas State Bar No. 13020050
900 Jackson Street, Suite 370
Dallas, Texas 75202
(214) 573-6311
(214) 752-1140 (Fax)

ATTORNEY FOR JAMES C. MUSSELMAN

CERTIFICATE OF SERVICE

I hereby certify that on September 22nd, 2005, a true and correct copy of the foregoing document was served electronically by the Court's PACER system or by first class mail, postage prepaid, on the persons named on the service list attached hereto.

/s/ Kimberly A. Elkjer

Kimberly A. Elkjer